

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

NORTHERN CALIFORNIA POWER AGENCY,) Case No. 11-1749 SC
)
Plaintiff,)
)
v.) ORDER GRANTING NCPA'S
) MOTION TO REMAND
ALTAROCK ENERGY, INC.; and LLOYD'S)
OF LONDON,)
)
Defendants.)
_____)

I. INTRODUCTION

Plaintiff Northern California Power Agency ("NCPA") commenced this action in California Superior Court for the County of Marin. See ECF No. 1 ("Notice of Removal") Ex. 1 ("Compl."). Defendant AltaRock Energy, Inc. ("AltaRock") removed. See Notice of Removal. Now NCPA, in response to the Court's April 27, 2011 Order to Show Cause, seeks an order remanding the action to state court. ECF Nos. 23 ("OSC"), 32 ("Mot."). AltaRock filed a brief in opposition to NCPA's Motion. ECF No. 33 ("Opp'n"). Defendant Lloyd's of London ("Lloyd's") has not filed a responsive brief, but has filed a motion for judgment on the pleadings or, in the alternative, for summary judgment. ECF No. 37 ("MSJ"). For the following reasons, the Court GRANTS NCPA's Motion to Remand and DENIES Lloyd's MSJ for lack of subject matter jurisdiction.

1 **II. BACKGROUND**

2 The following facts are taken from NCPA's Complaint. NCPA is
3 a "California Joint Powers Agency formed pursuant to the California
4 Joint Exercise of Powers Act and is comprised of 17-member
5 communities." Compl. ¶ 1. NCPA owns and operates a number of
6 power-generating facilities, including a geothermal steam
7 generation facility called "the Geysers" in Lake County,
8 California. Id. AltaRock is a geothermal energy development
9 company; NCPA identifies AltaRock in its Complaint as a Delaware
10 corporation with a principal place of business in Sausalito, Marin
11 County, California. Id. ¶ 2, 6. AltaRock allegedly approached
12 NCPA and claimed that it had developed new technology which could
13 improve the capabilities of NCPA's steam-generation facilities.
14 Id. ¶ 6. In 2009, AltaRock and NCPA entered into a written
15 agreement under which AltaRock agreed to implement its technology
16 on an NCPA-owned well as part of a trial business arrangement. Id.
17 ¶¶ 8-9. Lloyd's is AltaRock's insurer. Id. ¶ 18.

18 NCPA claims this trial run was "essentially a disaster." Id.
19 ¶ 8. NCPA alleges that AltaRock's negligence in attempting to
20 drill the well effectively destroyed its "utility and function."
21 Id. ¶¶ 10-16. NCPA claims that AltaRock abandoned the project
22 "because it was over budget and was intending to commence a more
23 lucrative project in Oregon for which it had received a \$20 million
24 grant from the Department of Energy." Id. ¶ 14.

25 NCPA filed its Complaint on March 2, 2011. See Compl. NCPA's
26 Complaint included three causes of action: negligence, declaratory
27 relief, and breach of contract. See id. AltaRock filed a petition
28 to compel arbitration under the agreement. See Notice of Removal.

1 After the state court had issued a tentative ruling staying
2 arbitration but before the state court made this ruling final,
3 AltaRock and Lloyd's joined in the removal of the action to federal
4 court, citing 28 U.S.C. § 1332 as the basis of the Court's
5 jurisdiction and alleging that AltaRock's principal place of
6 business was Seattle, Washington, not Sausalito, California. Id.

7 NCPA attempted to challenge this removal by improperly filing
8 another action in state court, which AltaRock also removed. See
9 Case No. 11-1806 (N.D. Cal., filed Apr. 11, 2011) ("the 11-1806
10 action"). NCPA filed an ex parte application for an order of this
11 Court staying arbitration, which the Court denied. ECF No. 7, 14.
12 NCPA then sought an entry of default, citing AltaRock's failure to
13 file a timely responsive pleading in this action; the Clerk of the
14 Court entered the default. ECF No. 16. AltaRock sought the
15 default to be set aside, which NCPA opposed. ECF Nos. 18, 22. The
16 Court set aside the default, dismissed with prejudice the 11-1806
17 action, and ordered briefing on the issue of subject matter
18 jurisdiction. See OSC.

19 In the responses to this OSC, NCPA argues removal was improper
20 because AltaRock, like NCPA, is a citizen of California for the
21 purposes of diversity subject matter jurisdiction. See Mot.
22 AltaRock argues that it is a citizen of Washington, not California.
23 See Opp'n.

24 25 **III. LEGAL STANDARD**

26 Any civil action brought in a state court may be removed to
27 federal court if there is complete diversity of citizenship and the
28 amount in controversy exceeds \$75,000. 28 U.S.C. §§ 1332, 1441.

1 As a general rule, the court must strictly construe the removal
2 statute, "and any doubt about the right of removal requires
3 resolution in favor of remand." Moore-Thomas v. Alaska Airlines,
4 Inc., 553 F.3d 1241, 1244 (9th Cir. 2009) (citation omitted). The
5 burden of persuasion for establishing diversity jurisdiction is
6 placed on the party asserting it. Hertz Corp. v. Friend, 130 S.
7 Ct. 1181, 1194 (2010). "When challenged on allegations of
8 jurisdictional facts, the parties must support their allegations by
9 competent proof." Id. at 1194-95.

10
11 **IV. DISCUSSION**

12 There is no dispute that § 1332's amount-in-controversy
13 requirement is satisfied. Nor is there any dispute that NCPA is a
14 citizen of California for the purpose of the diversity subject
15 matter jurisdiction. At issue is the state citizenship of
16 Defendant AltaRock.

17 Under 28 U.S.C. § 1332, a corporation is the citizen of its
18 state of incorporation and "the state where it has its principal
19 place of business." 28 U.S.C. § 1332. The parties agree that
20 AltaRock's state of incorporation is Delaware -- at issue is
21 AltaRock's "principal place of business." Under Hertz, a
22 corporation has a single principal place of business -- its "nerve
23 center." 130 S. Ct. at 1192. This is the place where "the
24 officers direct, control, and coordinate the corporation's
25 activities." Id. The Court cautioned, however, that the principal
26 place of business is not simply the place or "an office where the
27 corporation holds its board meetings," but the "main, prominent or
28 leading" place of direction, control, and coordination. Id.

AltaRock is identified in NCPA's Complaint as a Delaware corporation with a principal place of business in Sausalito, Marin County, California. Compl. ¶ 2. As the party seeking the jurisdiction of this Court, AltaRock has the burden of establishing its principal place of business is outside California. In its Notice of Removal, AltaRock states in a single sentence that its principal place of business is in the State of Washington. Notice of Removal ¶ 8.

NCPA applies the wrong standard in its Motion, applying the test used prior to Hertz. Nevertheless, NCPA puts forward evidence of the following relevant facts: approximately half of AltaRock's employees are stationed full-time in Sausalito, California; each of AltaRock's directors and officers maintains a California office. Mot. at 2. NCPA cites to press releases issued by AltaRock in 2008 and 2009 in which AltaRock claims that it has "corporate headquarters in Sausalito, California." Id. at 2. NCPA also cites to AltaRock's corporate registration with the Washington Secretary of State, which it alleges "confirms that half of [AltaRock's] governing board operates out of the Sausalito, California location." Mot. at 2. NCPA also claims that one of the two officers identified in the above-mentioned corporate registration "works solely from his residence in Wyoming." Id. at 3. This leaves a single officer -- AltaRock's president -- in AltaRock's Seattle, Washington office.

In response, AltaRock argues that in December 2010, it underwent corporate restructuring in which its California office was downsized and its Seattle office was designated as the headquarters office. Opp'n at 5. AltaRock argues that diversity

jurisdiction is determined at the time the action commences, citing Hill v. Blind Indus. & Servs. Of Maryland, 179 F.3d 754, 757 (9th Cir. 1999), and argues that because the Complaint was filed in March 2011, evidence of AltaRock's state citizenship predating the alleged December 2010 restructuring is irrelevant. Opp'n at 4-5. The sole evidence AltaRock submits in support of its Opposition is a declaration of AltaRock's assistant general counsel in which she declares that she updated AltaRock's corporate information with the California Secretary of State on May 19, 2011 to reflect AltaRock's address in Seattle, Washington. Thiagarajan Decl. ¶ 2 Ex. A.¹

The Court begins its analysis by noting that AltaRock, not NCPA, has the burden of establishing its state citizenship. AltaRock made no attempt to do this in its Notice of Removal, in which it alleged in one conclusory sentence that its principal place of business was in the state of Washington. Furthermore, the Court rejects AltaRock's argument that evidence of AltaRock's state citizenship predating the alleged December 2010 restructuring is irrelevant. In Hertz, the Court clarified that "the mere filing of a form . . . listing a corporation's 'principal executive offices' would, without more," would be insufficient proof to establish a corporation's "nerve center." 130 S. Ct. at 1295. The Court noted that if the rule were otherwise, parties could engage in "jurisdictional manipulation." Id. The evidence submitted by NCPA is relevant because it demonstrates that Sausalito, California served as AltaRock's principal place of business for a number of years; AltaRock must establish, in light of this evidence, that it

¹ Rena Thiagarajan ("Thiagarajan"), assistant general counsel for AltaRock, filed a declaration in support of AltaRock's Opposition. ECF No. 35.

1 effectively moved its principal place of business to Seattle in
2 December 2010. AltaRock produces no evidence save a print-out from
3 the California Secretary of State's web site showing a change of
4 address from California to Washington effective May 21, 2011.
5 Because AltaRock's assertion is not supported by any other
6 evidence, this has the hallmark of "jurisdictional manipulation"
7 the Court warned of in Hertz.

8 Having found that AltaRock has failed to establish diversity
9 of the parties, the Court finds that removal of this action was not
10 proper and REMANDS the action to state court.

11
12 **V. CONCLUSION**

13 For the foregoing reasons, the Court GRANTS the Motion to
14 Remand filed by Plaintiff Northern California Power Agency. The
15 Court REMANDS this action to California Superior Court, County of
16 Marin, for subsequent action. Because it lacks subject matter
17 jurisdiction over the action, the Court DENIES Lloyd's of London's
18 motion for judgment on the pleadings or, in the alternative, for
19 summary judgment.

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21 IT IS SO ORDERED.

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23 Dated: June 15, 2011

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UNITED STATES DISTRICT JUDGE